

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2138 OF 2007
IN
WRIT PETITION NO. 5347 OF 2006

Shri Lahu Shankar Patil

... Applicant
(Ori. Respondent)

V/s

1. SEA Carriers Shipping P.Ltd.
& anr.

... Respondents

Mr.S.C.Naidu i/by M/s.C.R.Naidu & Co. for the applicant.

Mr. Lancy D'Souza with Ms.Suja T.C. i/by M/s. Dunmorr
Sett for the respondent No.1.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 23RD OCTOBER, 2007.

P.C.:

1. The respondent No.1 (original petitioner) has filed the present petition challenging the award of the Tribunal granting reinstatement with continuity of service and full back wages to the respondent workman, the applicant herein.

2. While admitting the petition, this Court directed the respondent No.1 to deposit an amount of Rs.75,000/- within two weeks from the date of the order towards back wages which are payable under the order. Admittedly, this amount does not constitute the entire back wages

payable to the workman. In fact it would be much more since his services were terminated on 13.4.1992.

3. By the present civil application, the applicant has sought to withdraw the amount deposited. Another prayer has also been made for payment of wages under Section 17B of the Industrial Disputes Act. Admittedly, the applicant has crossed the age of 60 on 15.6.2006.

4. It is contended on behalf of the respondent No.1, in this civil application, that the wages under Section 17B are not payable to the applicant firstly because there was no affidavit filed by the workman and secondly, because in any event he has attained the age of superannuation i.e. 60 years and, therefore, he would no longer be in service beyond that date. It is also submitted that the amount of Rs.75,000/- should not be permitted to be withdrawn as there would be no security for the respondent No.1 (original petitioner) in case it succeeds in the petition.

5. Heard the learned counsel for both parties. Several judgements have been cited by both parties including the judgments reported in (2005) 11 SCC 449 between Uttaranchal Forest Development Corpn. & anr. v/s K.B.Singh & ors.; (2) 1998 I C.L.R. 191 between Dena

Bank v/s Kiritikumar T. Patel; (3) A.I.R. 1959 SC 1279 between Guest, Keen, Williams Pr.Ltd. v/s P.J.sterling & ors., and 2005 III C.L.R. 912 between Universal Transport Co. v/s Siraj Kadarbhai China & anr., regarding the amount which should be paid as wages under Section 17B, if at all. It is submitted on behalf of the applicant that there is no age of superannuation fixed in the respondent No.1 establishment since the Industrial Employment Standing Orders Act does not apply, as less than 50 workmen are employed. The Model Standing Orders therefore also do not apply. It is submitted that there are no Certified Standing Orders and hence there is no fixed age of retirement. On the other hand, it is submitted on behalf of the respondent No.1 that the normal age for retirement in the industry would be 60 years and no amount should be made payable after that age.

6. The submission of the learned counsel for the respondent No.1 that the application is not maintainable is without substance. The civil application is affirmed and averments are contained therein that the applicant is not gainfully employed. An additional affidavit has also been filed containing the same averments as also the statement that applicant is physically and mentally fit to continue in employment beyond the age of 60.

7. Having considered the arguments advanced by both parties and the judgments cited by both parties, in my view, the following order would meet the ends of justice:-

(i) The applicant is entitled to withdraw the amount of Rs.75,000/- which is deposited in this Court by furnishing security to the satisfaction of the Registrar General.

(ii) The applicant shall be paid wages under Section 17B from the date the petition was admitted and the award was stayed i.e. from 10.10.2006 till he attained the age of 60 years. The arrears in respect of Section 17B shall be paid within two weeks from today.

(iii) The award was passed on 8.2.2006 and stayed on 10.10.2006. Hence, full wages payable to the workman from 8.2.2006 to 10.10.2006 shall also be paid to the workman within two weeks from today.

(iv) In the event the petitioner succeeds, the Court at that stage will pass appropriate

orders regarding the amounts paid to the
workman.

8. Civil application disposed of accordingly.

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